

REMARKS

The final Office Action of March 11, 2010 presents the examination of claims 1-3, 6-14 and 20-22.

The present paper amends claims 1, 2 and 20-22 to delete some subject matter. Claims 12-14 are canceled. Applicants reserve the right to pursue the canceled subject matter in an application pursuant to 35 USC § 120.

Remaining amendments to the claims are of a minor, editorial nature.

No new matter is added by any amendment herein.

Rejection over prior art

Claim 22 is rejected under 35 USC § 103(a) as being unpatentable over WO 2004029054. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested. The Examiner denies the priority claim of claim 22 to JP 2004-093775 due to inclusion of particular compounds not specifically named in the priority application. Such compounds have been deleted from the recitations of claim 22.

Accordingly, the present claim 22 should now be accorded priority of JP 2004-093775, and the instant rejection should be withdrawn.

Rejections under 35 USC § 112

Claims 2 and 3 are rejected under 35 USC § 112, second paragraph, as being indefinite for reasons set forth at p. 4 of the Office Action. Claim 2 is amended in a manner that obviates this rejection.

Claims 2 and 3 are rejected under 35 USC § 112, first paragraph, for alleged lack of written description of three heterocyclic substituents. Claim 2 is amended in a manner that obviates this rejection.

Claim objections

Claims 13 and 14 are objected to as substantial duplicates of claim 11. These claims are canceled, thus rendering this objection moot.

Obviousness-type double patenting

Claims 1-3, 6-14 and 20-22 are provisionally rejected under the doctrine of obviousness-type double patenting over claim 122 and others of copending application 10/528,343.

Applicants wish to address this rejection substantially when the present claims are found otherwise in condition for allowance.

Applicants here inform the Examiner that the copending application 10/528,343 has issued as U.S. Patent 7,754,728, and a continuation application has been filed from the '343 application (Application No. 12/793,649).

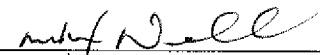
Applicants submit that the pending claims recite subject matter that is well-described and patentable over the prior art of record. The favorable actions of withdrawal of the standing rejections and allowance of the present claims are requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mark J. Nuell, Ph.D. (Reg. No. 36,623) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: September 13, 2010

Respectfully submitted,

By 

Mark J. Nuell

Registration No. 36,623

BIRCH, STEWART, KOLASCH & BIRCH, LLP

12770 High Bluff Drive, Suite 260

San Diego, CA 92127

(858) 792-8855

Attorney for Applicant